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U.S. DEPARTMENT OF JUSTICE  
FEDERAL COMMUNICATIONS COMMISSION

BY HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: **Notice of Ex Parte Presentation; Federal-State - Joint Board on  
Universal Service; CC Docket No. 96-45**

Dear Mr. Caton:

On September 15, 1997, the undersigned, representing EDS Corporation; John Lynn of EDS Corporation; Steve Stewart of IBM, and Jack Nadler, representing the Information Technology Association of America, met with Kathy Levitz, Deputy Chief, Common Carrier Bureau, and Diane Laws and Valerie Yates of the Common Carrier Bureau, to discuss certain aspects of the universal service fund as it relates to private operators, including systems integrators. The attached hand-out, in addition to the pleadings of the above-referenced parties already filed in CC Docket No. 96-45, covers the points discussed at the meeting.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter and attachment are being filed with the Secretary. Please date stamp the "stamp and return" copy of the letter for return by the messenger.

If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

*Randolph J. May*

Randolph J. May

Enclosure

cc: Kathy Levitz, Common Carrier Bureau  
Diane Laws, Common Carrier Bureau  
Valerie Yates, Common Carrier Bureau

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Ex Parte Submission of the Ad Hoc Telecommunications Users Group, EDS Corporation, the Information Technology Association of America, and International Business Machines Corporation, CC Docket 96-45

**THE COMMISSION SHOULD RECONSIDER ITS DECISION  
TO IMPOSE UNIVERSAL SERVICE PAYMENT OBLIGATIONS  
ON SYSTEMS INTEGRATORS  
AND OTHER PRIVATE SERVICE OPERATORS**

- **Systems integrators support the goal of universal service. They will make contributions to universal service through the rates that they pay to common carriers for telecommunications services.**
- **Requiring systems integrators to make payments directly to the universal service fund would not be competitively neutral.**
  - Requiring system integrators to make payments to the USF is not necessary to promote competitive neutrality. Systems integrators do not compete against common carriers. They generally do not provide stand-alone telecommunications services. Rather, they offer service packages that may include consulting, network design and management, telecommunications, computers and customer premises equipment, data processing, applications, and enhanced services.
  - In any case, the payment mechanism adopted in the Order is not competitively neutral. Rather, it will result in systems integrators making "double payments" to the USF.
    - + Common carriers are likely to limit their payments to the USF by claiming that revenue from sales to systems integrators is not end-user revenue, even though systems integrators use significant telecommunications capacity to provide enhanced service to their customers and to meet their internal needs.
    - + At the same time, because of the existence of long-term contracts, common carriers are unlikely to provide a "reseller's discount" to systems integrators.
    - + Systems integrators, in contrast, will be required to make payments to the USF on all transactions involving telecommunications, but will not be able to pass these costs on to their customers.

- **Requiring systems integrators to make payments to the universal service fund in the same manner as common carriers will impose significant new costs, while providing no new benefits.**
  - Systems integrators will incur significant costs.
    - + Unlike common carriers, systems integrators do not classify revenue as telecommunications or non-telecommunications. Nor do they separate interstate and intrastate revenues.
    - + To comply with the Order, systems integrators will be required to fundamentally restructure their business operations to reflect these regulatory distinctions.
    - + This will impose far more significant costs than the Commission anticipated. For some firms, these costs may outweigh the size of their USF payments.
  - Requiring systems integrators to make payments to the USF will not generate any additional revenue for universal service, and will have almost no effect on the size of the common carriers' contributions.
- **Solution I: Limit the universal service fund payment obligation to common carriers.**
  - Requiring private service operators to make payments to the USF violates congressional intent.
    - + The Telecommunications Act expressly preserves the distinction between common carriers and private service operators.
    - + Congress permitted the Commission to require private service operators to make USF payments if the agency determined that network bypass threatens the fund.
    - + The Commission has made no finding regarding bypass. Rather, it concluded that -- in the interest of "competitive neutrality" -- private service operators should be treated the same as common carriers. The FCC cannot substitute its judgment for that of the Legislature.

- The Order, for the first time, imposes identical regulatory obligations on common carriers and private service operators -- an outcome clearly at odds with the deregulatory policies that Congress embodied in the Telecommunications Act.
- Imposing USF payment obligations on private service operators could encourage and facilitate imposition of other forms of common carrier regulation by State and foreign regulatory authorities.
- **Solution II: Do not require systems integrators to make direct payments to the universal service fund.**
  - Because systems integrators typically do not compete against common carriers, the principle of competitive neutrality does not require that they contribute to the USF.
  - Systems integrators can be readily distinguished from other "other telecommunications providers."
  - This approach would not require major change to the Order.
- **Solution III: Modify the Order to eliminate the "double counting" problem.**
  - The Commission could make limited modifications to the Order to eliminate the double counting problem.
  - There are at least three ways in which the Commission could eliminate the problem:
    - + replace the end-user revenue approach with a "net telecommunications revenue" methodology;
    - + require carriers to provide lower rates to systems integrators and other private service operators that reflect the "avoided cost" from not having to make USF contributions based on telecommunications revenues obtained from these entities;
    - + require carriers to provide systems integrators and other private service operators with a "fresh look" at existing telecommunications contracts.

- **At a minimum, the Commission should limit the January 1998 universal service fund payment obligation to common carriers, and issue a further notice of proposed rulemaking.**
  - Imposition of USF payment obligation on systems integrators and other private service operators has raised numerous legal, policy, and administrative issues that the Commission did not anticipate.
  - The Commission should release a further notice of proposed rulemaking in order to develop a more adequate record regarding the imposition of USF payment requirements on non-carriers.
  - This approach will not reduce the amount of money available for universal service, and will have a de minimis effect on the size of carriers' initial contributions.